

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
MISSISSIPPI, NORTHERN DIVISION

Barry Alexander v. Warden Barnes et al.

Alexander · No. 3:25-cv-00983-CWR-BWR · Decided May 5, 2026

SUMMARY

This Report and Recommendation from the United States District Court for the Southern District of Mississippi addresses a habeas corpus petition filed by Barry Alexander. The magistrate judge recommends dismissal without prejudice under Federal Rule of Civil Procedure 41(b) and the court’s inherent authority because Alexander failed to file a completed petition, comply with court deadlines, and respond to an order to show cause. The recommendation was signed by Magistrate Judge Bradley W. Rath on May 5, 2026.

CASE DETAILS

COURT	United States District Court for the Southern District of Mississippi, Northern Division
WRITING FOR THE COURT	Bradley W. Rath
DECIDED	May 5, 2026
DOCKET	3:25-cv-00983-CWR-BWR
DISPOSITION	other
PROCEDURAL POSTURE	Petition for a writ of habeas corpus; report and recommendation addressing dismissal for failure to prosecute.
STANDARD OF REVIEW	A district judge reviews properly objected-to portions of a magistrate judge's report and recommendation de novo under Federal Rule of Civil Procedure 72(b)(3).
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Barry Alexander, Petitioner v. Warden Barnes et al., Respondent

TOPICS

- federal habeas corpus
- sanctions
- pleadings
- civil procedure

PRACTICE AREAS

- habeas corpus
- civil procedure

QUESTIONS PRESENTED

1. Whether the court may dismiss a habeas petition without prejudice for failure to prosecute under Federal Rule of Civil Procedure 41(b) and the court's inherent authority.
2. Whether dismissal without prejudice was warranted where the petitioner failed to comply with an order requiring a completed habeas petition and failed to respond to an order to show cause.

HOLDINGS

1. A federal court may dismiss an action, including a habeas petition, for failure to prosecute under Federal Rule of Civil Procedure 41(b) and its inherent authority to dismiss sua sponte.
2. Dismissal without prejudice was warranted because the petitioner failed to file the court-ordered completed petition, failed to respond to the show-cause order, and lesser efforts had not produced diligent prosecution.

KEY QUOTATIONS

“The Court must be able to clear its calendars of cases that remain dormant because of the inaction or dilatoriness of the parties seeking relief, so as to achieve the orderly and expeditious disposition of cases.” (at 2)

“Such a “sanction is necessary in order to prevent undue delays in the disposition of pending cases and to avoid congestion in the calendars” of the Court.” (at 2)

“It is apparent that Petitioner no longer wishes to pursue this lawsuit.” (at 3)

FACTUAL BACKGROUND

Barry Alexander, through counsel, filed a petition alleging that he had been illegally incarcerated for thirty years and that no judgment of conviction had been entered against him. The petition left unanswered ten of nineteen required queries, including the grounds for relief and the facts supporting those grounds. After the court ordered Alexander to file a complete Form AO 241 petition, counsel requested a fifteen-day extension without explanation, but no new petition was filed. Alexander also failed to respond to an order to show cause why the case should not be dismissed.

PROCEDURAL HISTORY

Alexander filed a habeas petition on December 23, 2025, but did not specify the grounds or supporting facts required for a § 2254 petition. The court ordered him to file a fully completed Form AO 241 petition, and counsel later requested additional time without showing good cause. After Alexander failed to file the amended petition and failed to respond to an order to show cause, the magistrate judge recommended dismissal without prejudice under Federal Rule of Civil Procedure 41(b) and the court's inherent authority.

DISPOSITION

other

CASES CITED

- Link v. Wabash R.R., 370 U.S. 626, 630-31 (1962)
- McCullough v. Lynaugh, 835 F.2d 1126, 1127 (5th Cir. 1988)
- Martinez v. Johnson, 104 F.3d 769, 772-73 (5th Cir. 1997)
- Tello v. Commissioner of Internal Revenue, 410 F.3d 743, 744 (5th Cir. 2005)
- Douglass v. United Services Automobile Association, 79 F.3d 1415, 1428-29 (5th Cir. 1996)

OPINION

Alexander

PER CURIAM.

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

NORTHERN DIVISION

BARRY ALEXANDER PETITIONER

V. CIVIL ACTION NO. 3:25-cv-00983-CWR-BWR

WARDEN BARNES et al. RESPONDENT

REPORT AND RECOMMENDATION

This matter is before the Court following Petitioner’s failure to prosecute. After consideration of the record and relevant legal authority, it is recommended that the Petition [1] be dismissed without prejudice for failure to prosecute.

I. BACKGROUND

On December 23, 2025, Petitioner Barry Alexander, through counsel, filed a Petition for Writ of Habeas Corpus [1]. The Petition did not state under which statute it was brought but alleged that Petitioner “has been illegally incarcerated, imprisoned and enslaved for thirty years without being convicted of a crime,” and his sentence is “illegal because there has never been a Judgment of Conviction entered against Petitioner.” Pet. [1] at 1-2. The Petition consisted of nineteen queries for Petitioner to answer. Petitioner did not answer ten queries, including, “[s]tate concisely the grounds on which you base your allegation that you are being held in custody unlawfully” and “the facts which support each of the grounds[.]” Id. at 2-5. On January 14, 2026, an Order issued requiring Petitioner to fully complete 1 and file a new petition on Form AO 241. This was ordered because the Petition filed did not contain the information required by Rule 2 of the Rules Governing Section 2254 Cases in the United States District Court, which requires, among other things, that a § 2254 petition “[s]pecify all the grounds for relief available to the petitioner” and “state the facts supporting each ground[.]” Rule 2(c), Rules Governing § 2254 Case in the U.S. Dist. Cts. The Court gave Petitioner a deadline of February 5, 2026 to file a new petition on Form AO 241 with “[a]ll applicable blanks on Form AO 241 . . . completed.” Order [2] at 2. Form AO 241 was attached to the Order. Attach. [2-1]. On his deadline of February 5, 2026, Petitioner’s counsel filed a Motion titled, “Motion for Additional Time to Comply with Order Dated January

14, 2026,” that stated in full: “Petitioner through counsel respectfully moves the Court for fifteen additional days to comply with the Order of January 14, 2026. Pet’r Mot. [3] at 1. Petitioner offered no explanation for why the extension was needed and did not attempt to establish good cause. Three months have passed since Petitioner’s counsel requested an extension of time to file a petition on Form AO 241, and Petitioner has not filed a new petition. On April 14, 2026, an Order issued requiring Petitioner to show cause why this case should not be dismissed because he failed to obey the Court’s Order to file a new, fully completed petition on Form AO 241 and failed to miss the extended deadline his counsel proposed. Petitioner was warned that “[f]ailure to timely respond to this Order and show cause will result in this case being dismissed without prejudice and 2 without further notice to Petitioner.” Order. [3]. Petitioner did not respond to the Court’s April 14, 2026 Order.

II. DISCUSSION

This Court has the authority to dismiss an action for a litigant’s failure to prosecute under Federal Rule of Civil Procedure 41(b) and under its inherent authority to dismiss an action sua sponte. See *Link v. Wabash R.R.*, 370 U.S. 626, 630–31 (1962); *McCullough v. Lynaugh*, 835 F.2d 1126, 1127 (5th Cir. 1988). The Court’s authority to dismiss an action for failure to prosecute extends to habeas- corpus petitions. See *Martinez v. Johnson*, 104 F.3d 769, 772–73 (5th Cir. 1997). The Court must be able to clear its calendars of cases that remain dormant because of the inaction or dilatoriness of the parties seeking relief, so as to achieve the orderly and expeditious disposition of cases. *Link*, 370 U.S. at 630. Such a “sanction is necessary in order to prevent undue delays in the disposition of pending cases and to avoid congestion in the calendars” of the Court. *Id.* at 630–31. Petitioner has not filed a new, fully completed Petition on Form AO 241, and he did not respond to the Court’s Order requiring him to show cause why this case should not be dismissed for failure to prosecute. It is apparent that Petitioner no longer wishes to pursue this lawsuit. As the record demonstrates, lesser sanctions than dismissal have not prompted “diligent prosecution” but instead such efforts have proven futile. See *Tello v. Comm’r of Internal Revenue*, 410 F.3d 743, 744 (5th Cir. 2005). Dismissal without prejudice is warranted. 3

III. RECOMMENDATION

It is recommended that the Petition [1] be dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(b) and the Court’s inherent authority because Petitioner has failed to prosecute.

IV. NOTICE OF RIGHT TO OBJECT

Within fourteen days after being served with a copy of this Report and Recommendation, a party may serve and file specific written objections to the proposed findings and recommendations. Fed. R. Civ. P. 72(b)(2). A party may respond to another party’s objections within 14 days after being served with a copy of the objections. *Id.* The district judge will determine de novo any part of the Report and Recommendation that has been properly objected to. Fed. R. Civ. P. 72(b)(3). The district judge may accept, reject, or modify the Report and Recommendation; receive further evidence; or return the matter to the magistrate judge with instructions. *Id.* An objecting party

must specifically identify the findings, conclusions, and recommendations to which he objects. A district judge need not consider frivolous, conclusive, or general objections. A party who fails to file written objections to the proposed findings, conclusions, and recommendations shall be barred, except upon grounds of plain error, from attacking on appeal any proposed factual finding or legal conclusion adopted by the Court to which he did not object. *Douglass v. United Servs. Auto. Assoc.*, 79 F.3d 1415, 1428-29 (5th Cir. 1996), superseded by statute on other grounds, 28 U.S.C. § 636(b)(1). 4 SIGNED, this the 5th day of May 2026. Bradley W. Rath s/

BRADLEY W. RATH

UNITED STATES MAGISTRATE JUDGE

5